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MICHAEL RODAK, JR., CLERK

# In the Supreme Court of the United States

October Term, 1979

No. 86, Original

STATE OF LOUISIANA, Plaintiff,

vs.

STATE OF MISSISSIPPI, ET AL., Defendants.

## BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT AND APPLICATION FOR STAY ORDER

BILL ALLAIN, Attorney General

State of Mississippi

HUBBARD T. SAUNDERS, IV

Special Assistant Attorney General

Post Office Box 220

Jackson, Mississippi 39205

Telephone: (601) 354-7130

MITCHELL EMMETT WARD

WARD, MARTIN, TERRY & WAY

Post Office Box 789

Vicksburg, Mississippi 39180

Telephone: (601) 696-6565

Attorneys for Defendants

March, 1980

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The State of Mississippi and Avery B. Dille, Jr., [sometimes hereinafter referred to as Mississippi], the defendants in this original action, respectfully submit this brief in opposition to the Motion for Leave to File Complaint and Application for Stay Order filed in this action on December 21, 1979, by the plaintiff, the State of Louisiana [hereinafter referred to as Louisiana].

### JURISDICTION

Louisiana invokes this Court's original jurisdiction under Article III, Section 2, Clause 2, of the United States Constitution and 28 U.S.C. § 1251(a). Complaint ¶ 1.

U. S. Const., Art. III, § 2, cl. 2 provides in pertinent part:

In all Cases . . . in which a State shall be a Party, the Supreme Court shall have original Jurisdiction. . . 28 U.S.C. § 1251(a) provides:

The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

### **QUESTION PRESENTED**

Whether Louisiana's Motion for Leave to File Complaint and Application for Stay Order should be granted in view of the pending federal district court action which involves the same identical controversy.

### **STATEMENT OF THE CASE**

Louisiana seeks leave of this Court to file its complaint against Mississippi and Avery B. Dille, Jr., a citizen of Mississippi who owns lands in Adams County, Mississippi, which border the Mississippi River across from Concordia Parish, Louisiana. Louisiana seeks an adjudication of the boundary line in the Mississippi River between Louisiana and Mississippi just above the area of the river known as Giles Bend Cut-off. Louisiana specifically seeks an adjudication that State of Louisiana Well No. 3 is in Louisiana.

In a civil action presently pending in the United States District Court for the Southern District of Mississippi, *Avery B. Dille, Jr. v. Pruet & Hughes Co., et al.*, Civil Action No. W79-0069(R), App. C, Dille seeks an adjudication that the live thalweg of the river has migrated to the west by accretion to such an extent that State of Louisiana Well No. 3 is now located in Mississippi. Louisiana is a defendant in the district court action.

## ARGUMENT

This action is clearly within this Court's original jurisdiction under Article III, Section 2, Clause 2 of the United States Constitution and 28 U.S.C. § 1251(a). Indeed, this Court has, on numerous occasions, exercised original jurisdiction over boundary disputes between states. *E.g., Ohio v. Kentucky*, 100 S. Ct. 588 (1980); *Mississippi v. Arkansas*, 415 U.S. 289 (1974); *Nebraska v. Iowa*, 406 U.S. 117 (1972); *Louisiana v. Mississippi*, 384 U.S. 24 (1966); *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657 (1838). Here, however, the motion for leave to file the complaint should be denied because of the pendency of the federal district court action.

In *Arizona v. New Mexico*, 425 U.S. 794 (1976), this Court denied Arizona's motion for leave to file a bill of complaint by concluding: "In the circumstances of this case, we are persuaded that the pending state-court action provides an appropriate forum in which the issues tendered here may be litigated." *Id.* at 797 (emphasis in original). The Court prefaced its holding by the following discussion of the invocation of original jurisdiction:

We recently reaffirmed that "our original jurisdiction should be invoked sparingly" in *Illinois v. City of Milwaukee*, 406 U.S. 91, 93-94 (1972), where we additionally stated:

"We construe 28 U.S.C. § 1251(a)(1), as we do Art. III, § 2, cl. 2, to honor our original jurisdiction but to make it obligatory only in appropriate cases. And the question of what is appropriate concerns, of course, the seriousness and dignity of the claim; yet beyond that it necessarily involves the availability of another forum where there is jurisdiction over the named parties, where the

issues tendered may be litigated, and where appropriate relief may be had. We incline to a sparing use of our original jurisdiction so that our increasing duties with the appellate docket will not suffer."

And, nearly 40 years ago in *Massachusetts v. Missouri*, 308 U.S. 1, 18-19 (1939), the Court said:

"In the exercise of our original jurisdiction so as truly to fulfill the constitutional purpose we not only must look to the nature of the interest of the complaining State—the essential quality of the right asserted—but we must also inquire whether recourse to that jurisdiction . . . is necessary for the State's protection. . . . We have observed that the broad statement that a court having jurisdiction must exercise it . . . is not universally true but has been qualified in certain cases where the federal courts may, in their discretion, properly withhold the exercise of the jurisdiction conferred upon them where there is no want of another suitable forum."

See also *Washington v. General Motors Corp.*, 406 U.S. 109, 113-114 (1972).

425 U.S. at 796-97.

Here, Louisiana has an adequate forum to present its claims—the United States District Court for the Southern District of Mississippi where the same issues are before the district court. A denial of Louisiana's motion would remit Louisiana to an adequate forum and allow this Court to avoid a further drain of its time and resources from its appellate docket, while, at the same time, ensuring that this Court will still be able to review this case through a writ of certiorari.

**CONCLUSION**

For these reasons, the Court should deny the Motion for Leave to File a Complaint and the Application for Stay Order.

Respectfully submitted,

BILL ALLAIN, Attorney General  
State of Mississippi

By: HUBBARD T. SAUNDERS, IV  
Special Assistant Attorney General  
Post Office Box 220  
Jackson, Mississippi 39205  
Telephone: (601) 354-7130

MITCHELL EMMETT WARD  
WARD, MARTIN, TERRY & WAY  
Post Office Box 789  
Vicksburg, Mississippi 39180  
Telephone: (601) 636-6565  
*Attorneys for Defendants*

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